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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,366	01/30/2002	Robert Kay	5600-2	3751
7590	03/15/2004		EXAMINER	
John V Moriarty Woodard Emhardt Naughton Moriarty & McNett 111 Monument Circle Suite 3700 Indianapolis, IN 46204			SILBERMANN, JOANNE	
			ART UNIT	PAPER NUMBER
			3611	17
DATE MAILED: 03/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	914366	Applicant(s)	Kay
Examiner	Silbermann	Group Art Unit	3611

→The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on _____.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1 - 38 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1 - 38 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) _____.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 11, 12, 16 Interview Summary, PTO-413

Notice of References Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

DETAILED ACTION

Claim Objections

1. Claims 2 and 13 are objected to because of the following informalities: claim 2 does not read as a complete sentence and claim 13 should depend from claim 12. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2 and 14-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Morton, US #6,078,424.

4. Morton discloses a novelty device having a lenticular image (column 2 line 32) for providing a display that is synchronized with audio data (column 7 line 21). The drive signal and the sound signal coincide so as to provide the observer with audio that is synchronized to the moving image.

5. Movement of the lenticular image may be cyclical (column 5 line 1). Synchronization is ensured by having the audio unit generate signals that are used to drive the motor (preferably a stepper motor) to move the image (column 7 lines 53-67).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-13 and 26-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morton.

8. Morton does not specifically teach the image as being a character having a mouth that opens and closes, however, this is considered to be entirely a matter of design choice. The particular image on the display is decorative only. Also, the examiner takes official notice of children's toys that portray the image of a character speaking in synchronization with a soundtrack.

9. Morton does not specifically describe the motion of the image repeating for each syllable, etc. however, this is considered to be an inherent feature, since Morton teaches synchronization between the image and the sound. It would have been obvious to a person having ordinary skill in the art to repeat the animation as necessary, or ramp the signal or use a stepped signal to achieve synchronization.

10. Morton teaches the lenticular image as being changeable (column 8 line 1).

11. Morton does not teach a scrolling web for providing the image, however this is considered to be an equivalent alternative to the images.

12. Morton also does not teach using a mobile telecommunication device, however, use of such devices for downloading sound samples is old and well known in the art.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US patents 6125190 and 6532690 are cited as of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 703-308-2091. The examiner can normally be reached on Tu-Th 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joanne Silbermann
Primary Examiner
Art Unit 3611

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